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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Michael D. Ellis

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ROPES & GRAY LLP

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EXAMINER

SHEPARD, JUSTIN E

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/821,005	Applicant(s) ELLIS ET AL.	
	Examiner Justin E. Shepard	Art Unit 2424	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5-7,10-17,24-30,33-35,38-45 and 52-72 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5-7,10-17,24-30,33-35,38-45 and 52-72 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/19/09; 6/5/09</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/19/09 has been entered.

Response to Arguments

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

The previous 112 and claim objections are withdrawn.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 5-7, 10-12, 24-26, 29, 30, 33-35, 38-40, 52-54, and 57-72 are rejected under 35 U.S.C. 102(e) as being anticipated by Bates.

Referring to claim 1, Bates discloses a method for use in a recording system for reducing cut-offs when programs are recorded (column 2, lines 30-40), the method comprising:

receiving at the user equipment a user selection of a first program to record (figure 6, part 114; column 7, lines 22-25);

predicting by the user equipment a first time change associated with the selected first program (figure 6, part 116) by retrieving from memory a second time change associated with a second program, wherein the selected first program is of a program type similar to a program type of the second program (figure 7; column 8, lines 27-37); and

recording by the user equipment the selected first program to compensate for a time change based on the predicted first time change (figure 6, part 114; column 7, lines 22-25).

Claim 29 is rejected on the same grounds as claim 1.

Referring to claim 2, Bates discloses a method of claim 1 wherein the predicted first time change comprises predicted time delay information (figure 7).

Claim 30 is rejected on the same grounds as claim 2.

Referring to claim 5, Bates discloses a method of claim 2 wherein the predicted time delay information is based on previously logged time changes (figure 7).

Claims 10, 33, and 38 are rejected on the same grounds as claim 5.

Referring to claim 6, Bates discloses a method of claim 1 further comprising displaying a predicted time delay information for the selected first program (figure 6).

Claim 34 is rejected on the same grounds as claim 6.

Referring to claim 7, Bates discloses a method of claim 1 wherein the predicted first time change comprises predicted time extension information (figure 7).

Claims 11, 35, and 39 are rejected on the same grounds as claim 7.

Referring to claim 12, Bates discloses a method of claim 1 further comprising providing a user with an opportunity to select a recording start time (figure 6).

Claim 40 is rejected on the same grounds as claim 12.

Referring to claim 24, Bates discloses a method of claim 1 further comprising displaying an icon in a program listing for the selected first program to indicate that the predicted first time change is available (figure 6).

Claim 52 is rejected on the same grounds as claim 24.

Referring to claim 25, Bates discloses a method of claim 1 further comprising displaying an icon in a program listing for the selected first program that indicates that the selected first program is to be recorded (figure 6).

Claim 53 is rejected on the same grounds as claim 25.

Referring to claim 26, Bates discloses a method of claim 1 further comprising trimming a recording time of the selected first program or an adjacent program to reduce the cut-off in a program recording (figure 6).

Claim 54 is rejected on the same grounds as claim 26.

Referring to claim 57, Bates discloses a method of claim 1 further comprising allowing the user to change the predicted first time change (figure 6).

Claim 58 is rejected on the same grounds as claim 57.

Referring to claim 59, Bates discloses a method of claim 1, wherein the predicted first time change is based on time changes for previous programs that were scheduled to be broadcast on the same channel as the selected first program (figures 6 and 7).

Claim 64 is rejected on the same grounds as claim 59.

Referring to claim 60, Bates discloses a method of claim 1, wherein the predicted first time change is based on time changes for previous programs that are the same as the selected first program (figures 6 and 7).

Claim 65 is rejected on the same grounds as claim 60.

Referring to claim 61, Bates discloses a method of claim 1, further comprising: receiving the second program from a media provider, wherein the second program is associated with a particular broadcast time interval; detecting a change in the broadcast time interval of the second program; and storing the change in the broadcast time interval of the second program in memory in response to detecting the change (figures 6 and 7).

Claim 66 is rejected on the same grounds as claim 61.

Referring to claim 62, Bates discloses a method of claim 61, further comprising: determining whether the second program is related to the selected first program; and retrieving change in the broadcast time interval of the second program from memory in response to determining that the second program is related to the selected first program, wherein the predicted first time change associated with the selected first program is based on the retrieved change in the broadcast time interval of the second program (figures 6 and 7).

Claim 67 is rejected on the same grounds as claim 62.

Referring to claim 63, Bates discloses a method of claim 61, wherein the broadcast time interval of the second program includes a start time and an end time (figures 6 and 7).

Claim 68 is rejected on the same grounds as claim 63.

Referring to claim 69, Bates discloses a method of claim 1, wherein the predicted first time change is predicted before any part of the selected first program is recorded (figures 6 and 7).

Claim 70 is rejected on the same grounds as claim 69.

Referring to claim 71, Bates discloses a method of claim 1 further comprising: displaying a prompt to inform the user about the predicted first time change associated with the selected first program; and receiving indication from the user that instructs the user equipment to compensate for the time change based on the predicted first time change (figures 6 and 7).

Claim 72 is rejected on the same grounds as claim 71.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13, 14, 16, 17, 41, 42, 44, and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bates in view of Hoffberg.

Referring to claim 13, Bates does not disclose a method of claim 1 further comprising automatically selecting the recording start time.

In an analogous art, Hoffberg teaches a method of claim 1 further comprising automatically selecting the recording start time (column 62, lines 56-59).

At the time of the invention, it would have been obvious for one of ordinary skill in the art to add the automatic recording taught by Hoffberg to the method disclosed by Bates. The motivation would have been to enable the programs that the user prefers to be recorded without the user's intervention, therefore saving the user time.

Claim 41 is rejected on the same grounds as claim 13.

Referring to claim 14, Bates does not disclose a method of claim 13 further comprising providing a user with an opportunity to select to have automatic selection of the recording start time.

In an analogous art, Hoffberg teaches a method of claim 13 further comprising providing a user with an opportunity to select to have automatic selection of the recording start time (column 62, lines 56-59).

At the time of the invention, it would have been obvious for one of ordinary skill in the art to add the automatic recording taught by Hoffberg to the method disclosed by Bates. The motivation would have been to enable the programs that the user prefers to be recorded without the user's intervention, therefore saving the user time.

Claim 42 is rejected on the same grounds as claim 14.

Referring to claim 16, Bates does not disclose a method of claim 1 further comprising automatically selecting the recording end time.

In an analogous art, Hoffberg teaches a method of claim 1 further comprising automatically selecting the recording end time (column 62, lines 56-59).

At the time of the invention, it would have been obvious for one of ordinary skill in the art to add the automatic recording taught by Hoffberg to the method disclosed by Bates. The motivation would have been to enable the programs that the user prefers to be recorded without the user's intervention, therefore saving the user time.

Claim 44 is rejected on the same grounds as claim 16.

Referring to claim 17, Bates does not disclose a method of claim 16 further comprising providing a user with an opportunity to select to have automatic selection of the recording end time.

In an analogous art, Hoffberg teaches a method of claim 16 further comprising providing a user with an opportunity to select to have automatic selection of the recording end time (column 62, lines 56-59).

At the time of the invention, it would have been obvious for one of ordinary skill in the art to add the automatic recording taught by Hoffberg to the method disclosed by Bates. The motivation would have been to enable the programs that the user prefers to be recorded without the user's intervention, therefore saving the user time.

Claim 45 is rejected on the same grounds as claim 17.

Claims 15 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bates in view of Yuen.

Referring to claim 15, Bates does not disclose a method of claim 1 further comprising providing a user with an opportunity to select a recording end time.

In an analogous art, Yuen teaches a method of claim 1 further comprising providing a user with an opportunity to select a recording end time (column 24, lines 51-58).

At the time of the invention, it would have been obvious for one of ordinary skill in the art to add the recording end time setting taught by Yuen to the method disclosed by Bates. The motivation would have been to enable the user to quickly add time to a recording session if an issue arises with the broadcast, such as a presidential address.

Claim 43 is rejected on the same grounds as claim 15.

Claims 27, 28, 55, and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bates in view of Lewine.

Referring to claim 27, Bates does not disclose a method of claim 26 wherein trimming the recording time comprises trimming based on a confidence level in time change information for the selected first program and the adjacent program.

In an analogous art, Lewine teaches a method of claim 26 wherein trimming the recording time comprises trimming based on a confidence level in time change information for the selected first program and the adjacent program (column 7, lines 14-22; column 6, lines 20-30).

At the time of the invention, it would have been obvious for one of ordinary skill in the art to add the confidence selection taught by Lewine to the method disclosed by Bates. The motivation would have been to enable the system to make a better selection of possible reruns to record if the program had been interrupted.

Claim 55 is rejected on the same grounds as claim 27.

Referring to claim 28, Bates does not disclose a method of claim 27 wherein trimming comprises trimming a time changed recording time of the selected program when time change information for the selected first program has a lower confidence level than the adjacent program.

In an analogous art, Lewine teaches a method of claim 27 wherein trimming comprises trimming a time changed recording time of the selected program when time change information for the selected first program has a lower confidence level than the adjacent program (column 7, lines 14-22; column 6, lines 20-30).

At the time of the invention, it would have been obvious for one of ordinary skill in the art to add the confidence selection taught by Lewine to the method disclosed by Bates. The motivation would have been to enable the system to make a better selection of possible reruns to record if the program had been interrupted.

Claim 56 is rejected on the same grounds as claim 28.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Justin E. Shepard whose telephone number is (571) 272-5967. The examiner can normally be reached on 7:30-5 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JS

/Joseph G Ustaris/
Primary Examiner, Art Unit 2424